IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5663 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DY.EX4ECUTIVE ENGINEER GUJARAT MARITIME BOARD

Versus

VAGHJIBHAI RAMJIBHAI BAMANIA

Appearance:

1. Special Civil Application No. 5663 of 1999

MS SEJAL K MANDAVIA for Petitioner No. 1

MR TR MISHRA for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Mandavia for the petitioner and Mr. Mishra for the respondent workman. The petitioner Board is challenging the common award made by the labour court concerned in Reference No. 12 of

1998; 13 of 1998 and 14 of 1998 dated 12th April, 1999 whereby the labour court concerned has granted reinstatement in favour of the three workmen while setting aside the order of termination dated 24th March, 1986 and has directed the petitioner board to reinstate the workmen with continuity of service with 60 per cent of the back wages for the intervening period. This Court has, while issuing rule on 3rd April, 2000, has granted interim relief in terms of para 10(C) on a condition that the petitioner board shall reinstate the workmen concerned within three months from the date of the order and shall also pay full wages to the workmen concerned from the date of the award till the date of their actual reinstatement within six weeks from the date of the said order.

Learned advocate Mr. Mishra appearing for the respondents workmen has submitted that the interim order passed by this court while admitting this petition was challenged by the petitioner before the division bench of this Court by filing letters patent appeal which has been dismissed by the division bench of this court and, thereafter, the workmen concerned have been reinstated in service by the board.

Learned advocate Ms. Mandavia for the petitioner has submitted that the Board has complied with the provisions of section 25-F of the Industrial Disputes Act, 1947 while terminating the services of the workmen concerned by offering the compensation to the workmen concerned but the same has been refused by the workmen concerned and ultimately the amount was sent by the Board by Money Order to the respondents workmen and, therefore, the findings recorded by the labour court that the board has not complied with the provisions of section 25-F of the Industrial Disputes Act, 1947 are contrary to record. She has submitted that the witness for the board has, in terms, stated before the labour court that at the time of termination, offer was made to the workman for payment of compensation but the same has not been accepted and ultimately, the amount was sent by the money order. She has submitted that two persons were recruited or appointed subsequent to the termination of the respondents herein but they were appointed in view of the orders passed by this Court and, therefore it cannot be said that the petitioner has not followed the provisions of section 25-H of the Industrial Disputes Act, 1947 and as such, findings recorded by the labour court to that effect are also contrary to law and facts. She has further submitted that the petitioner is a public body and the respondents were the daily rated employees of the

board and the matter had remained pending before the labour court for a period of about thirteen years or so and the petitioner cannot be considered to be responsible for such delay and, therefore, according to her, the award of back wages to the extent of sixty per cent for the intervening period is on higher side, to some extent.

On the other hand, learned advocate Mr. Mishra has drawn attention of this court to page 32, internal page 19 of the award in question and has submitted that the witness for the petitioner has, in terms, admitted that the workman concerned namely Vaghji Ramji has worked for about four and half years and the another workman namely Abubhai Kasambhai has worked for about five and half years and Babubhai Bhagwanbhai has worked for about six years. Upon perusal of para 19 of the award in question, it appears that the witness for the petitioner has given deposition at Exh. 43 before the labour court where he has stated that it is true that Vaghji Ramji has worked for about four and half years and the another workman namely Abubhai Kasambhai has worked for about five and half years and Babubhai Bhagwanbhai has worked for about six years. After drawing attention of this court towards the deposition of the witness for the petitioner at Exh. 43, Mr. Mishra has submitted that in view of such clear cut admission made by the witness for the petitioner board, the labour court is right incoming to the conclusion that at the time of issuing the orders of termination, the petitioner board has not complied with section 25-F of the Industrial Disputes Act,1947. As regards the submissions made by Ms.Mandavia that the amount was then sent by Money Order, he has submitted that there was nothing on record produced by the petitioner board that the Money Order was sent by the board to the respondent. He has submitted that it was a mere statement made on oath but not substantiated by any documentary evidence and the witness was not aware whether it was sent for compensation or for notice pay in lieu of notice. He has submitted that the labour court was right in deciding that the provisions of section 25-H of the I.D. Act were not followed as two persons were recruited subsequent to the termination of the respondent. He has submitted that the petitioner Board has not produced muster roll and pay register of the respondents before the labour court and in such circumstances, the labour court was right in believing the oral testimony of the workmen concerned and the labour court was right in making the award in question in favour of the respondents. He has submitted that the office of the petitioner board is not closed but it was merely shifted from one place to another place and,

therefore, it is not correct to say that the office was closed, according to the evidence on record. He has further submitted that the labour court has given cogent and convincing reasons in support of the award in question and no error has been committed by the labour court while making such an award in favour of the workmen concerned and, therefore, this court should not interfere with such an award made by the labour court.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. The respondents were challenging the termination orders before the labour court on the ground that they were in continuous service for about four and half years and completed 240 days service and yet, the board has not complied with the provisions of section 25-F of the I.D. Act while terminating their services. The another ground for challenge was that subsequent to the termination of their services, new recruitments were made by the Board and at that time, the board ought to have offered them by following provisions of section 25-H of the I.D. Act but the respondents were not offered.

Before the labour court, statement of claim was filed by the workmen and the written statement thereto was filed by the board and thereafter, as per the order passed below Exh. 27, three cases were consolidated by the labour court pursuant to the request made by the parties before it and thereafter, the respondents produced list of documents at Exh. 10 and vide Exh. 6 he board has produced certain documents and vide Exh. 38, the board has produced certain other documents and thereafter, the deposition of the workman Vaghji Ramji was recorded at Exh. 28. He deposed before the labour court for himself and also for and on behalf of the other two workmen and thereafter, his oral evidence was closed. The petitioner board has cross examined the oral evidence of the respondent wherein the respondent has denied that they have refused the offer of compensation made by the board and thereafter, one witness was examined on behalf of the board at Exh. 43 who has admitted at page 32 that this workmen have completed service of about four and half years to six years and this admission made by the witness for the petitioner has been considered by the labour court while making the award in question. The second admission made by the witness for the petitioner was to the effect that after termination of service, one workman Shrimali and Goswami were recruited by the petitioner on job. In light of this admission made by the witness for the petitioner board, the labour court

considered that the respondents were prepared to join the duties but they were not offered and the board was not ready and willing to offer them to resume duties. The labour court has come to the conclusion that there is nothing on record to show that the offer of compensation made by the petitioner has been refused by the workmen concerned and therefore, it was sent by Money Order thereafter and in view of such conclusion, the labour court has disbelieved that contention of the petitioner by considering the evidence, both oral and documentary evidence, before it and has also come to the conclusion that the order of termination has become bad in view of violation of section 25-H of the Industrial Disputes Act, 1947.

As regards the contention of Ms. Mandavia that the labour court has ignored the material aspect that the offer was made for compensation was made but it was refused and then the amount was sent by Money Order, she has produced one letter showing that the amount was sent by Money Order. Upon perusal of the said letter, it was pointed out by this court to Ms. Mandavia that only monthly salary has been paid as per the said letter and after perusing the said letter, Ms. Mandavia has admitted that the amount of retrenchment compensation has not been offered. Therefore, even if it is believed that the amount was sent by the board by money order and it was received back by it as refused by the respondent workmen, then also, it cannot be said that the amount of retrenchment compensation was offered by the board and the same was refused by the respondents workmen as required under section 25F of the Industrial Disputes Act, 1947. Conditions precedent to retrenchment of workmen have been prescribed in section 25-F of the Act. Thus, the petitioner has not been able to prove before the labour court that the workmen have been given one month's notice in writing indicating the reasons for retrenchment or notice pay in lieu of such notice as per section 25-F (a) of the Act or that the workmen concerned have been paid at the time of their retrenchment, compensation as per section 25F(b) and before this court also, Ms. Mandavia has after perusing the said letter, admitted that the amount of retrenchment compensation has not been offered and what was send by Money Order was merely salary for the period for which the workmen concerned had worked. In view of these factual aspects, according to this Court's opinion, the labour court was right in setting aside the order of termination passed against the respondents herein and in granting reinstatement with continuity of service.

However, so far as the back wages are concerned, the labour court has granted reinstatement with sixty per cent of the back wages for the intervening period on the presumption that the workmen would not remain unemployed for such a long period of about thirteen years. I have considered the submissions made by Ms. Mandavia in this regard. The reference proceedings remained pending before the labour court for about thirteen years and the respondents have worked with the petitioner prior to termination of their services for a period from four and half years to about six years and it cannot be said that the reference has remained pending because of any fault on the part of the petitioner. Further, the petitioner is a public body. Therefore, according to my opinion, the award of back wages at the rate of 60 per cent for the intervening period is on higher side, to some extent and same is required to be reduced to only 40 per cent for the intervening period. To that extent, the award in question is required to be modified without disturbing remaining part of the award in question.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court in Reference No. 1388 of 1986, 1389 of 1986 and 1390 of 1986 dated 12th April, 1999 is modified only in so far as it relates to back wages from 60 per cent to 40 per cent for the intervening period and it is declared that the respondents are entitled to only 40 per cent of the back wages for the intervening period instead of 60 per cent as has been granted by the labour court for the intervening period. It is clarified that the award of reinstatement with continuity of service has not been disturbed by this court. Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs.

At this stage, learned advocate Mr. Mishra for the respondents has submitted that the interim orders in this petition were passed by this court on 3rd April, 2000 and the respondents were reinstated in service after six to seven months and the respondents are entitled for full wages from the date of the award till the date of their actual reinstatement and therefore, some directions are required to be issued to the petitioner to pay full back wages to the respondents from the date of the award till the date of their actual reinstatement. He has further submitted that the petitioner is also required to be directed to pay the back wages as per the award made by the labour court as modified by this court within some reasonable period.

Considering the submissions made by Mr. Mishra,

it is directed to the petitioner board to make payment of back wages at the rate of 40 per cent for the intervening period, till the date of the award in question and to pay full wages to the respondents from the date of the award till the date of their actual reinstatement within two months from the date of receipt of copy of this order.

9.5.2002. (H.K. Rathod,J.)

Vyas